

# MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

## INTEROFFICE COMMUNICATION

OPERATIONAL MEMO 111-8  
Revision 1

March 4, 1999

TO: Waste Management Division (WMD) Supervisors  
Hazardous Waste Permits Unit (HWPU) Staff

FROM: Jim Sygo, Chief  
Waste Management Division

SUBJECT: Closure Extensions and Amendments

The purpose of this memorandum is to provide Michigan Department of Environmental Quality (MDEQ), WMD, HWPU staff with instructions on how to process closure extension requests and closure plan amendment requests. The information provided in this memo and the internal office procedures contained herein are intended solely for the use of MDEQ, WMD, HWPU staff. They are not intended, nor do they constitute, rule-making by the MDEQ, and may not be relied upon to create a right or a benefit, substantive, or procedure, enforceable at law or in equity, by any person. The MDEQ may take any action which is at variance with the information and procedures contained in this memo. The memo is subject to revision.

Closure extensions and closure plan amendments for interim status facilities are discussed in 40 Code of Federal Regulations (CFR) 265.113 and 265.112(c), respectively. The provisions for closure plan amendments and closure extensions for permitted and licensed facilities, discussed in R 299.9613 (which in turn references 40 CFR Part 264, Subpart G), are similar to those for interim status facilities.

### **Closure Extensions**

Formal procedures and substantive criteria for obtaining a closure extension are established in R 299.9601(1) and (3), and 40 CFR 265.113. The regulations stipulate that a closure extension be requested in writing and be proposed:

1. At least 30 days prior to the expiration of the 90-day closure initiation period referred to in 40 CFR 265.113(a); and/or
2. At least 30 days prior to the expiration of the 180-day closure period referred to in 40 CFR 265.113(b) or the expiration of the closure period specified in the approved closure plan.

### **Closure Plan Amendments**

Formal procedures and substantive criteria for amending closure plans are established in R 299 9601(1) and (3), and 40 CFR 265.112(c). The regulations stipulate that a modification to an approved closure plan be requested in writing and be proposed:

1. At least sixty (60) days prior to a proposed change in facility design or operation;
2. Within 60 days after an unexpected event that has affected the closure plan; and/or
3. Within 30 days after an unexpected event during the closure event.

The regulations also discuss the level of public participation necessary when processing a closure plan amendment. This topic is discussed later in this memo.

### **CLOSURE EXTENSIONS; REVIEWS AND PROCESSING**

The following steps should be taken when reviewing a closure extension request:

#### **Timely Request**

1. Evaluate the demonstration made by the facility to determine if it meets the substantive criteria outlined in 40 CFR 265.113(a), (b) or (c)
2. Adequate demonstration
  - 2.1. approve request,
  - 2.2. modify and approve request,
  - 2.3. disapprove request and advise compliance with approved closure plan.
3. Inadequate demonstration
  - 3.1. disapprove request stating reason for disapproval and advise compliance with approved closure plan.

#### **Untimely Request**

1. Disapprove the request and explain that the facility must proceed expeditiously with closure in accordance with the approved closure plan.

For both timely and untimely requests, the facility must be informed that any deviation from the approved closure plan in any way must be approved by the MDEQ prior to implementation by the facility. Such deviation requests must be submitted to the MDEQ as closure plan amendment (i.e., change in closure schedule) requests in accordance with 40 CFR 265.112(c). The amendment requests should be processed as outlined in Item II below. The MDEQ approval is not necessary, however, for closure activities outlined in the approved closure plan.

## **CLOSURE PLAN AMENDMENTS; REVIEWS AND PROCESSING**

Care must be taken in processing closure plan amendment requests. It is important to distinguish between closure plan amendment requests and submittals, and submission of work plans required in the approved closure plan. Closure plan amendment requests are requests to change the scope of the approved closure plan. Such requests can arise when an event has occurred that was not anticipated, i.e., "unexpected event". The work outlined in amendment submittals will likely result in the need for additional time to complete closure (i.e., closure period extension necessitating amendment of the closure schedule).

Work plans may be required in an approved closure plan in situations where the potential for problems exists (e.g., groundwater contamination, contamination extending under a building, etc.). Such work plans may also change the scope of the approved closure plan. The work plans must be approved by the MDEQ prior to implementation by the facility. Once approved, the work plan becomes an enforceable part of the approved closure plan. The work plan must be submitted by the facility within the closure period and does not automatically extend the closure period. If a facility, upon discovering that it must submit the work plan, determines that additional time will be necessary to complete closure, it must submit an extension request in accordance with 40 CFR 265.113. The MDEQ shall evaluate such a request as outlined in Item I above.

The following steps should be taken when processing closure plan amendment requests:

### **Timely Request**

1. Evaluate the amendment request to determine if it meets the substantive criteria outlined in 40 CFR 265.112(c).
2. Adequate demonstration
  - 2.1. approve amendment request,
  - 2.2. modify and approve amendment request,
  - 2.3. disapprove amendment request, explain why request was disapproved, and inform facility to proceed expeditiously with closure in accordance with the approved closure plan.
3. Inadequate demonstration
  - 3.1. disapprove amendment request, explain why request was disapproved, and inform facility to proceed expeditiously with closure in accordance with the approved closure plan.

### **Untimely Request**

1. Work with the Enforcement Section to draft a Notice of Violation (NOV) and Consent Order, as necessary, and approve amendment request.

2. Work with the Enforcement Section to draft a NOV and Consent Order, as necessary and modify and approve amendment request.
3. Disapprove amendment request, explain why request was disapproved, and inform facility to proceed expeditiously with closure in accordance with approved closure plan

Closure plan amendment requests that are submitted after the closure period has expired and for which the facility did not request an extension of the closure period in a timely manner, may only be approved via Consent Order.

Failure to comply with the approved closure plan and/or Consent Order may result in increased enforcement action.

### **HWPU PROCEDURES FOR CLOSURE EXTENSIONS/AMENDMENTS**

In outlining how the HWPU handles closure extension requests and closure plan amendment requests, several concerns were identified that warrant attention:

1. If you approve a closure plan which calls for submittal of a work plan should a certain situation present itself, you must specify in the closure plan:
  - 1.1. The submittal date of the work plan (i.e., with a given timeframe after the situation is identified);
  - 1.2. That the work plan must be accompanied by an amended closure schedule as appropriate;
  - 1.3. Submittal of the work plan does not automatically extend the closure period;
  - 1.4. If an extension of the closure period is necessary, the facility must submit an extension request in accordance with the provisions of 40 CFR 265.113; and
  - 1.5. Any deviation from the approved closure plan must be approved by the MDEQ in writing prior to implementation by the facility, and that such deviation must be outlined in a formal amendment request which is submitted in accordance with 40 CFR 265.112.

Due to the problems that may be encountered in trying to process untimely work plan submittals (i.e., work plans that are submitted near the end of the closure period for which the facility did not submit a timely extension request), it is recommended that we avoid requiring, in approved closure plans, submittal of interim work plans. By doing this, any deviation from the approved closure plan would then have to be processed as a closure plan amendment subject to the requirements of 40 CFR 265.112(c).

2. Facilities must be informed that approval of a closure plan amendment does not, in and of itself, extend the closure period. Facilities must request an extension of the closure period if additional time is necessary and submit a revised closure schedule to carry out activities in the original approved closure plan or a subsequently approved closure plan amendment. Closure extension requests and closure plan amendment requests are separate items - approval of one does not constitute approval of the other.
3. The level of public participation required to effect a closure plan amendment (i.e., a deviation from an approved plan) for interim status facilities is addressed in R 299.9519 of the administrative rules promulgated pursuant to Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. As outlined in R 299.9519, two types of amendments exist: minor modifications that do not require public noticing the amendment but rather just providing notification to the facility mailing list, and major modifications that require public noticing the amendment and providing notification to the facility mailing list. R 299.9519 (5)(d) identifies those amendments to closure plans that are considered minor modifications under state law. Please note that the state does not adopt the Class 1, 2, and 3 modification system in 40 CFR 270.42.
4. It is important to exercise good judgement in determining the level of public participation necessary (i.e., what constitutes a minor modification and therefore would not require public noticing the amendment, but rather just possibly notifying those individuals on the facility-specific mailing list of the amendment proposal, and what constitutes a major modification and would require public noticing the amendment).
5. R 299.9519(9) specifies that any modification that is not specifically listed in R 299.9519 (5) shall be considered a major modification unless the criteria specified therein are met. In determining what constitutes a minor modification, it is important to remember the intent of closure. Closure is designed to evaluate the impact of hazardous waste management activities on the environment and address any contamination resulting from such activities. Changes that are necessary to determine if contamination is present and characterize the contamination are within the scope of most closure plans.
6. If a facility certifies a closure and staff determines that the facility did not comply with the approved closure plan and must do additional work, the facility will need to amend the closure plan (i.e., revise the closure schedule). Such an amendment will likely be untimely and require the issuance of a Consent Order.
7. It is difficult to predict when a closure plan amendment request will be submitted. Upon receipt of a closure plan amendment request, staff should briefly review the request for compliance with the time and substantive criteria requirements. Good judgement should be exercised in evaluating compliance with the requirements. If the request is definitely not acceptable, the disapproval of the request should be processed immediately.

8. If the request is reasonable, staff should review as soon as their schedule allows. In the interim, staff should contact the company and acknowledge receipt of the request.

A handwritten signature in black ink, appearing to read "Jim Sigo". The signature is written in a cursive, flowing style with a large loop at the beginning and a long, sweeping tail.